

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES THOR KIRK,

Plaintiff,

v.

No. 18-cv-0288 MV/SMV

DAVID JABLONSKI,

Defendant.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on the Pro Se Petition for a Peremptory Writ of Mandamus [Doc. 1] filed by Plaintiff James Thor Kirk on March 27, 2018. Plaintiff's Pro Se Petition is on a New Mexico state court form and, although mailed to this Court, indicates it is in the "First Judicial District, County of Santa Fe, State of New Mexico." [Doc. 1] at 1. The relief sought includes:

Compensate, punitive, nominal Reliefs as Law states per day false imprisonment, cruel and unusual punishment per day of prolonged isolation @ NENMDF seg, PNM VI seg, and GCCF lockdowns, Relief Requested \$400,000.00 and any other fees the Court deems proper . . .

Id. at 2. The remedy for recovery of damages for violation of constitutional rights, such as the right to be free from cruel and unusual punishment, is under 42 U.S.C. § 1983. *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994). Therefore, based on the nature of the claims asserted and the request for damages in the prayer for relief, Plaintiff appears to be asserting a prisoner civil rights claim under § 1983.

The Court determines that the pro se complaint is deficient as follows:

(1) Plaintiff has not paid the \$400 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs; and

(2) the pro se complaint is not in proper form.

If Plaintiff intends to pursue prisoner civil rights claims in this Court, Plaintiff must cure the deficiencies. Plaintiff must cure the deficiencies by (1) filing a prisoner civil rights complaint in proper form and (2) paying the \$400 filing fee or submitting an application to proceed without prepayment of fees and costs under 28 U.S.C. § 1915. Plaintiff is reminded that he has incurred three strikes under 28 U.S.C. § 1915(g) and may not proceed *in forma pauperis* in this Court unless he is in imminent danger of serious physical injury. The deficiencies must be cured within 30 days of entry of this Order. Plaintiff must include the civil action number, 18-cv-0288 MV/SMV, on all papers he files in this proceeding. If Plaintiff fails to cure the deficiencies, the Court may dismiss this proceeding without further notice.

IT IS ORDERED that no later than April 27, 2018, Plaintiff cure the deficiencies by (1) paying the \$400 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court mail to Plaintiff, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.



STEPHAN M. VIDMAR
United States Magistrate Judge